

Attorney Docket No.: **BOE0005US.NP**
Inventors: **Thomas Rillmann**
Serial No.: **10/589,292**
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REMARKS

Claims 1-14 are pending in the instant application. Claims 1-14 have been rejected. Claims 1, 12 and 13 have been amended. Claims 4 and 14 have been canceled. No new matter has been added by this amendment. Reconsideration is respectfully requested in light of the following remarks.

I. Rejections Under 35 U.S.C. 112

Claims 12-14 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

With respect to claim 12, it is suggested that there is insufficient antecedent basis for the limitation "the mouthpiece." Applicant has made the appropriate amendment to claim 12 and therefore respectfully requests that this rejection be withdrawn.

Regarding claim 13, it is suggested that the claim recites duplicate claim language as claim 1. Applicant respectfully traverses this rejection. Claim 13 refers to a filling device, which is an element of the conveyor device of claim 1. In this respect, claim 13 does not refer to "a supply container (8) having a lower opening (9) to which the filling device (7) can be coupled" as required by claim 1. Thus, the scope of claim 13 is distinct from claim 1 and it is respectfully requested that this rejection be reconsidered and withdrawn.

Regarding claim 14, it is suggested that the claim has introduced new elements, which are not part of the claimed invention as outlined in claim 1. It is suggested that the

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invention pertains to a conveyor device, not to a powdered press mass, a tablet press, and a feed shoe. Applicant respectfully disagrees. However, in the interest of facilitating the prosecution of this application, Applicant has canceled claim 14. Accordingly, it is respectfully requested that this rejection be reconsidered and withdrawn.

II. Rejections Under 35 U.S.C. §102

Claims 1-3, 5, 9, 10 12, and 13 have been rejected under 35 U.S.C. 102(b) as being anticipated by Stanelle et al. (U.S. Patent No. 5,190,132). It is suggested that Figure 1 of Stanelle et al. depicts the claimed features.

Applicant respectfully disagrees with this rejection. At the outset, marked up Figure 1 of Stanelle et al., referred to at page 3 of the Office Action, was not attached to the Office Action nor was it available on PAIR. Thus, elements alleged to anticipate the present invention were inferred by Applicant in the interest of facilitating the prosecution of this application.

Stanelle et al. teach a device for loading a silo vehicle having circular filling opening and closing part **42** which is moved up and down by pull ropes **30,32**. Claim 1, column 6 (lines 59-62) and Figure 2. In contrast, the instant device has an outlet flap (4) with a pivot axis. Accordingly, in an earnest effort to highlight this distinct feature of the instant device, Applicant has amended claims 1 and 13 to indicate that the outlet flap has a pivot axis. In so far as this amendment finds support in claim 4, claim 4 has been canceled.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently

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described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). See MPEP 2131.

Because Stanelle et al. fail to teach or suggest each and every element of the claims as currently presented, this reference cannot be held to anticipate the present invention. It is therefore respectfully requested that this rejection under 35 U.S.C. 102(b) be reconsidered and withdrawn.

III. Rejections Under 35 U.S.C. §103

Claims 4 and 11 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Stanelle et al. (US 5,190,132). It is acknowledged that Stanelle et al. does not teach a flap that pivots. However, it is suggested that it would have been an obvious matter of design choice as to how one attaches a closable flap to open/close a tube, wherein there are many known options as to how a tube may regulate flow and the mere selection of one of these options does not provide a patentable departure over the device of Stanelle et al. It is further suggested that Applicant does not provide a particular reason why having a pivoting flap is better than another closure method of a flap.

Claims 6-8 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Stanelle et al. (US 5,190,132). It is

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acknowledged that Stanelle et al. fail to teach a sealing ring to prevent fine materials from leaking outside the guide tube. However, it is suggested that Stanelle et al. teach a sealing tube **22**, which stretches from top to bottom on the exterior of the device, such that it would have been obvious to modify the device of Stanelle et al. to include sealing rings at individual sections as a design alternative.

Applicant respectfully traverses these rejections. Stanelle et al. describes a system for loading a silo vehicle with pourable bulk material. In contrast, the instant conveyor device is for use in tabletting processes. See page 1, lines 9-13 of the instant specification. It is clear that the scale and purpose for which these two devices are designed is completely different. Indeed, by virtue of its size, the device of Stanelle et al. would not provide the technical advantage of the present invention, i.e., preventing demixing of powdered media intended for tabletting, nor does Stanelle et al. teach that the device disclosed therein may have this advantageous effect. Accordingly, there is nothing in the teachings of Stanelle et al. that would lead the skilled person to consider the device disclosed therein for use in a tabletting process.

In this respect, there would have been no rationale to alter the device of Stanelle et al. to have a flap with a pivot axis as presently claimed. The specification teaches:

"In order to keep the outlet hopper closed while the telescopic elements are in the contracted position, the outlet flap, which is arranged in the outlet hopper and is able to close the outlet opening of the outlet hopper, has a pivot axis about which the outlet flap is pivotable in the interior of the outlet hopper." Page 4, lines 23-28.

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The specification further indicates:

"The outlet flap of the filling device in the lower region of the outlet hopper is then opened only after docking to the feed shoe of a tabletting machine." Page 5, lines 26-29.

As is clear from these passages in the specification, the outlet flap must have a dual role; it must be capable of being closed in the contracted position but also open when the filling device is docked to the feed shoe. The device of Stanelle et al. would not be able to achieve this dual role because the "closing part **42**" functions by moving up and down. The need for the closing part **42** to be in a lowered position for it to be open would prevent the system from operating when docked to, for example, the feed shoe of a tabletting machine. Furthermore, the closing part **42** is actually wider than the outlet collar **20** so this would also prevent a sealed fit with the opening of, for example, a feed shoe.

In contrast to the device of Stanelle et al., the pivotal flap of the present invention allows the claimed conveyor device to remain operable even when docked with a further element. This is a clear advantage that is neither taught nor suggested by Stanelle et al., thus making the pivotable flap a novel feature of the present invention.

"[A] patent composed of several elements is not provided obvious merely by demonstrating that each of its elements was, independently, known in the art. Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, it can be important to identify a

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reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does." *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, ____ 82 USPQ2d 1385, 1396 (2007).

In the instant case, the Examiner has not provided sufficient rationale as to why one of ordinary skill in the art would have modified the device of Stanelle et al. to contain an outlet flap with a pivoting axis as presently claimed, in particular when the device of Stanelle et al. is for use in loading a silo vehicle and Stanelle et al. provide no suggestion of adding additional elements such as a feed shoe. Accordingly, in so far as base claim 1 is novel and nonobvious, so too are dependent claims 6-8 and 11. It is therefore respectfully requested that these rejections under 35 U.S.C. 103(a) be reconsidered and withdrawn.

IV. Conclusion

Applicant believes that the foregoing comprises a full and complete response to the Office Action of record. Accordingly, favorable reconsideration and subsequent allowance of the pending claims is earnestly solicited.

Respectfully submitted,



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